

The Honorable Kymberly K. Evanson

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JOLENE FURDEK and JONATHAN RYAN,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation, and APPLE INC., a California
corporation,

Defendants.

Case No. 2:22-cv-01599-KKE

**STIPULATED MOTION AND ORDER
CONCERNING TESTIFYING EXPERT
DISCOVERY**

1 WHEREAS, all parties desire to provide an efficient framework for the discovery of
2 expert witness-related materials; and

3 WHEREAS, all parties through their respective counsel of record have considered the
4 expert witness discovery provisions of Federal Rule of Civil Procedure 26 and agreed upon the
5 proposed modifications and supplementations described herein;

6 NOW THEREFORE, all parties, through their respective counsel of record, stipulate to
7 the following regarding expert discovery in the above-captioned matter, subject to approval by
8 the Court.

9 1. This Stipulation and Order Concerning Testifying Expert Discovery
10 (“Stipulation”) does not set or alter the time for any disclosure required by Federal Rule of Civil
11 Procedure 26(a)(2)(B).

12 2. To the extent this Stipulation imposes limitations on discovery that would
13 otherwise be available under the Federal Rules of Civil Procedure, including but not limited to
14 Rule 26(b)(4)(C), the parties have agreed to those limitations to increase the efficiency of their
15 dealings with testifying experts and to minimize discovery disputes regarding testifying experts.
16 Neither the terms of this Stipulation nor the parties’ agreement to them shall be an admission by
17 any party that any of the information restricted from discovery by this Stipulation would
18 otherwise be discoverable or admissible. The term “expert” as used herein refers to a witness a
19 party may use to present evidence under Federal Rule of Evidence 702, 703, or 705.

20 3. Except as provided in paragraph 5 below, the following information shall *not* be
21 the subject of any form of discovery:

22 a. The content of communications, whether oral or written, among and
23 between:

24 (i) Parties or counsel on the one hand, and on the other hand the
25 expert and/or the expert’s staff and/or supporting firms;

26 (ii) Parties or counsel on the one hand, and on the other hand any non-
27 testifying expert consultant and/or the consultant’s staff and/or
28 supporting firms;

- (iii) the expert and other experts and/or other non-testifying expert consultants;
- (iv) experts and their staff and/or supporting firms;
- (v) non-testifying expert consultants and their staffs and/or supporting firms;
- (vi) the respective staffs and/or supporting firms of experts or non-testifying expert consultants and the staffs and/or supporting firms of other experts or non-testifying expert consultants.

4. Except as provided in paragraph 5 below, notes, drafts, written communications, preliminary or intermediate calculations, computations or other data runs, or other types of preliminary work created by, for, or at the direction of a testifying expert need not be produced. To be clear, while the materials listed in this paragraph need not be produced along with the expert reports, nothing herein prevents counsel from questioning testifying experts on analysis or materials they considered but did not ultimately rely on, or moving to compel production if expert discovery reveals those materials were relied on. For avoidance of doubt, the preceding sentence does not permit counsel to question the testifying experts on analysis or materials that only testifying expert's support staff, and not the testifying expert herself, considered.

5. The limitations in paragraph 3 and 4 above shall not apply to any communications, documents, data sets, data runs, calculations, computations, or other forms of information or work upon which a testifying expert relies as a basis for any of his or her final opinion(s) or report(s).

6. Subject to sub-paragraphs (a) and (b) below, within three business days of any party serving any expert report and/or expert declaration under Fed. R. Civ. P. 26(a)(2)(B), the party or parties proffering the expert witness shall produce: the data or other information relied upon by the expert witness in forming the expert witness's opinions; any exhibits used (or that will be used) to summarize or support the expert witness's opinions; the expert witness's qualifications, including a list of all publications authored in the previous 10 years; a list of all other cases in which, during the previous four years, the expert witness has testified as an expert

1 at trial or by deposition; and a statement of the expert's hourly rate and compensation to be paid
2 for the expert witness's study and testimony in this case.

3 a. As used in paragraphs 6 and 8 of this Stipulation, "data or other
4 information relied upon" shall be deemed to include, but will not be
5 limited to, underlying data, spreadsheets, computerized regression
6 analyses and/or other underlying reports, and schedules sufficient to
7 reconstruct the expert witness's work, calculations, and/or analyses. "Data
8 or other information relied upon" should be produced electronically (via
9 email, disc, or FTP site) where feasible. Publicly available information
10 need not be produced absent request so long as the information relied upon
11 remains publicly available and the location where the publicly available
12 information can be obtained is provided. Documents previously produced
13 during discovery need not be produced so long as they are identified by
14 Bates number.

15 b. All "data or other information relied upon" shall be provided in a format
16 as agreed to by the parties, including, potentially, any software and
17 instructions required to read "the data or other information relied upon,"
18 but no party need produce computer software reasonably and
19 commercially available (e.g., Microsoft Word, Excel). For clarity, ordinary
20 licensing fees shall not be considered in evaluating whether computer
21 software is reasonably and commercially available.

22 7. To the extent that the specific stipulations agreed to herein limit or waive
23 disclosure requirements under Fed. R. Civ. P. 26(a)(2)(B), the parties hereby confirm that they
24 expressly agree to such waiver.

25 8. No subpoenas (for depositions or documents) need be served on any testifying
26 expert from whom a report or declaration is provided. Instead, the party proffering such expert
27 will (a) produce all "data or other information relied upon" by the expert, consistent with the
28

terms of this Stipulation, and (b) make the expert available for deposition at a time mutually agreed to by the parties and consistent with the Court's scheduling orders.

9. Nothing in this Stipulation shall permit a party or testifying expert to withhold any proposition, fact, belief, or other data, information, or material upon which the expert relies to support her or his opinion(s).

The parties agree to comply with this Stipulation and Order pending the Court's approval.

DATED: July 24, 2025

Respectfully submitted,

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ORDER

In accordance with the parties' stipulation, it is SO ORDERED.

Dated this 25th day of July, 2025.



Kyemberly K. Evanson
United States District Judge